

TITLE 170
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT

SERIES 1
MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE
SYSTEM

§170-1-1. General.

1.1. Scope. Pursuant to Chapter 15, Article 5B, Section 5 of the West Virginia Code, the West Virginia Division of Homeland Security and Emergency Management does hereby adopt the following rules governing the establishment and operation of the Mine and Industrial Accident Rapid Response System (MIARRS) for the purpose of coordinating rapid and appropriate response to mining and industrial accidents; governing participation by public agencies in response to mining or industrial accidents; and, governing protections of privacy for the state's citizens and of the homeland security during the project, as well as governing the distribution generally of records and information collected during response operations.

1.2. Authority. -- W. Va. Code §15-5B-5.

1.3. Filing Date. --

1.4. Effective Date. --

§170-1-2. Definitions.

2.1. The following terms shall have the meaning as used in this Rule unless in a context that requires a different meaning:

a. “Director” is defined as the Director of the Division of Homeland Security and Emergency Management.

b. “Center” is defined as Mine and Industrial Accident Emergency Operations Center and is the official and primary state facility for dealing with mine and industrial accidents.

- “MIAARS is defined as the Mine and Industrial Accident Response System.
- ‘Covered facilities’ means all underground mining operations, surface mining operations, or mining related operations, regardless of the source of the hazard.
- ‘Accident’ is defined in W. Va. Code §22A-2-66 to include the following:
 1. Death of an individual at a mine;
 2. An injury to an individual at a mine which has a reasonable potential to cause death;
 3. The entrapment of an individual;
 4. The unplanned inundation of a mine by a liquid or gas;
 5. The unplanned ignition or explosion of gas or dust;
 6. The unplanned ignition or explosion of a blasting agent or an explosive;
 7. An unplanned fire in or about a mine not extinguished within five minutes of ignition;

8. An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

9. A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

10. An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;

11. Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with the use of equipment for more than thirty minutes;

12. An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs;

c. 'Emergency shall mean a situation or occurrence that happens unexpectedly and demands immediate action to protect life and property or that requires a response that exceeds the capabilities of the covered facility or responding agency.

- 'Emergency mine response' includes all incident reporting, rescue and on-scene operations and coordination of all involved parties.

- ‘Response procedures’ means those procedures developed by the Director regarding the Mine and Industrial Accident Rapid Response System and distributed internally in the Center and externally to effected agencies and operators.
- ‘Release Authority’ is the Director or his or her designee and applies to the release of information, records, recordings and other pertinent materials collected or in the possession of the Center under the terms of the Freedom Of Information Act, W. Va. §29B-1 et seq. and the identity of victims or their families.

2.2. Terms not defined in these rules, nor having a meaning ascribed to them pursuant to W. Va. Code §15-5B shall have the meaning and definition ascribed to them by other applicable regulations, codes, or rules.

§170-1-3. Center Establishment and Operations.

3.1. The Director will establish a standard operating guide to be developed for the Center. This standard operating guide will detail the initial and subsequent steps to be taken in response to a reported accident or emergency.

3.2. The Director will establish the Center in an appropriate space near the State Emergency Operations Center. This new Center will be equipped with appropriate telephone, telephone recording equipment, caller identification equipment, facsimile, internet access, furniture and other equipment relative to the Center. The Director will also staff the Center with personnel necessary to the operation of the Center.

3.3. The Division of Homeland Security and Emergency Management may accept grants and donations toward any cost associated with establishing, equipping and operating the MIARRS.

3.4. All personnel who work for the MIARRS must undergo an appropriate background check prior to being employed by the director.

3.5. The Director shall cause an appropriate method and process for coordinating emergency response assets including industry inspectors from regulatory agencies, response equipment and supplies and other response data. Such coordination methods and processes may include electronic information manipulation and retrieval and appropriate geospatial information systems.

§170-1-4. Notification of Emergency Incidents by Covered Facilities.

4.1 All covered facilities are to report accidents or emergencies to the Division of Homeland Security and Emergency Management at the West Virginia Mine and Industrial Accident Call Center at 1-866-987-2338 or other such number as may be identified by the director.

4.2 All calls received on the published line are to be recorded for documentation purposes. Such recording of calls is to be automatic and the recorded call information, to include time of call and complete voice transcripts, shall be made available to any appropriate, approved and authorized representative of regulatory, enforcement, or investigative agencies upon written request. Such requests must describe the nature of the need for such information and the purpose for which it will be used.

4.3 Voice and data recordings of calls received at the

Center containing information about a deceased miner or person, or miner or person sustaining injuries in an industrial accident that may result in death shall not be released to the public, pursuant to the Freedom of Information Act or other authority for request, until such time as the Release Authority has determined that a member of the miner's or person's family or next of kin has been notified of the miner's or person's death or injuries which may result in death, but in no event longer than the amount of time specified in the law.. The release authority shall make every effort to determine that the notification of family or next of kin has been made by the appropriate entity and once verified shall document the date and time of such notification and by whom the notification was made. The director shall establish a policy for securing the recordings of such calls to insure that they remain intact and unaltered at all times. The Director shall establish an appropriate fee schedule to recover costs associated with any Freedom of Information request.

4.4 Any call received at the center on any line that involves the reporting of a crime, law enforcement information or such information as may be detrimental to any investigation shall not be released subject to any Freedom of Information request until such time as it may be deemed appropriate by the director after consultation with the appropriate law enforcement agency having jurisdiction or the appropriate prosecutorial authority for the jurisdiction in which the incident occurred.

§170-1-5. Requests for Information – General Provisions.

- All requests for information must include the following information in order for the request to be considered. The minimal information is as follows:
 - a. All requests for information must state with reasonable specificity the information sought.

General information regarding the incident to aid in identifying the specific records required,

- Name of the individual making the request,
- The date and time information is required, and,
- Any other related information regarding the individual request.
- Requests for information shall be processed in accordance with W. Va. Code §29B-1 et seq. to include appropriate fees for duplication and other costs.

§170-1-6. Trade Secrets and Confidential Information

6.1 Covered facilities requesting protection of information considered as trade secrets or proprietary information must provide justification for such requests in accordance with W. Va. Code §29B-1-4.

- Information received and recorded by the Center or its personnel which contains law enforcement information or information involved in the reporting of an actual or potential crime is exempt from Freedom of Information Act release without prior approval of appropriate law enforcement officials.
- Information received shall be released to appropriate regulatory or investigative agencies upon written request and

upon approval by the Director or his or her designee.